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10 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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12 CALVIN ROUSE (A.K.A.) ABDUR  
RASHID KHALIF,

13 Plaintiff,

14 v.

15 WASHINGTON STATE  
16 DEPARTMENT OF CORRECTIONS *et*  
*al.*,

17 Defendants.  
18

Case No. C08-5620FDB

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

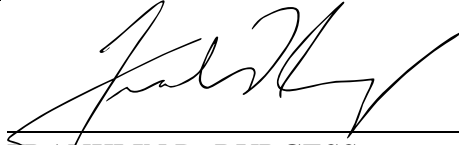
19 The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley  
20 Arnold, objections to the report and recommendation, if any, and the remaining record, does hereby  
21 find and ORDER:

- 22 (1) The Court adopts the Report and Recommendation;
- 23 (2) The motion is **GRANTED** as to the Department of Corrections  
24 because the Department is not a person for purposes of 42 U.S.C. §  
25 1983. The Eleventh Amendment also precludes the action against the  
Department. This is **DISMISSAL WITH PREJUDICE**.
- 26 (3) Defendant Eldon Vails' Motion to Dismiss on Eleventh Amendment grounds is  
27 **DENIED**. As Secretary for the Department of Corrections, he is the proper  
28 defendant for an action seeking injunctive relief regarding the implementation of DOC  
policy 400.280.

1 (4) The Motion to Dismiss claims for nominal damages is **GRANTED**. Plaintiff failed to  
2 pled facts showing what, if any, action the named defendants played in the alleged  
constitutional deprivations. This is **DISMISSAL WITH PREJUDICE**.

3 The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants, and to  
4 the Hon. J. Kelley Arnold.

5  
6 DATED this 14<sup>th</sup> day of April 2009.

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9 FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE